

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-104619-15

Date:
August 04, 2015

Re:

LEGEND

Decedent =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Child 1 =
Child 2 =
Date 5 =
Grandchild 1 =
Grandchild 2 =
Date 6 =

Dear :

This letter responds to the letter dated January 28, 2015, submitted by your authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file, pursuant to § 26.2601-1(b)(3)(iii)(A) of the Generation-Skipping Transfer Tax Regulations, a qualified physician's certification or other evidence that Decedent was mentally incompetent at all times on and after October 22, 1986, until her death.

The facts submitted and representations made are summarized as follows:

Decedent created a revocable trust (Trust) on Date 1, which was amended and restated on Date 2. Decedent executed six amendments to the restated Trust, the last amendment on Date 3, a date prior to October 22, 1986. Decedent died on Date 4, survived by Child 1 and Child 2. Upon the death of Decedent, the remainder of Trust

was split into two equal shares and held in further trust. The first share was for the benefit of Child 1 and the second share was for the benefit of Child 2.

Child 1 possessed a limited power to appoint his share in his will. To the extent that the power of appointment is not exercised, then, upon the death of Child 1, Child 1's share is to be divided into equal shares for each of Child 1's children then living and a share for the then living issue collectively of any deceased child. Each trust share created for a descendant of Child 1 is to be held in further trust. Child 1 died on Date 5, survived by Grandchild 1 and Grandchild 2.

The executors of Decedent's estate timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on Date 6. The executors did not file with the Form 706 a physician's certificate or other evidence of Decedent's mental incompetency.

It is represented that Decedent was incompetent at all times on and after October 22, 1986, and did not regain competency to modify or revoke the terms of Trust before her death.

You request an extension of time under § 301.9100-3 to file pursuant to § 26.2601-1(b)(3), a qualified physician's certification or other evidence demonstrating that Decedent was mentally incompetent at all times on and after October 22, 1986, until her death.

Section 2601 of the Internal Revenue Code (Code) imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i), if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or care of the individual's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if there has not been a court adjudication that the decedent was mentally incompetent on or before October 22, 1986, the executor must file, with Form 706, either—(1) a certification from a

qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician, and any judgment or decree relating to the decedent's incompetency that was made after October 22, 1986.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts submitted and the representations made we conclude that the requirements of § 301.9100-3 have been met. Therefore, we grant an extension of time of 120 days from the date of this letter to file the required physician's certification or other evidence. The physician's certification or other evidence should be attached to a supplemental Form 706 for Decedent's estate. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should also be attached to the supplemental Form 706. A copy of this letter is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: